

Conditional Zoning and Impact Fee Authority in Virginia

1. Conditional Zoning

Under Virginia law, there are three different types of conditional zoning (also known as proffer zoning) which localities are authorized to use:

a. Conditional zoning as authorized by §§ 15.2-2296 through 15.2-2302 (excluding §15.2-2298).

This form of conditional zoning is available to all localities but is quite restrictive. The proffered condition must arise from the rezoning application and may not include cash proffers nor dedication of real or personal property.

b. Conditional zoning authorized by § 15.2-2298.

This is the most recently authorized form of conditional zoning and is available to any locality which has had a population increase of 10 percent or greater from the next-to-latest to latest decennial census. Cash proffers are permitted under this type of conditional zoning. However, there are restrictions on how this type of conditional zoning can be used that are not applicable to the type authorized by § 15.2-2303. (See c below.)

c. Conditional zoning authorized by § 15.2-2303.

This type of conditional zoning applies generally to Northern Virginia and the Eastern Shore and is the most flexible of the three types with few restrictions on what may be proffered and accepted. Cash proffers are permitted.

2. Impact Fees

Under current law, the use of impact fees is limited to roads only. The General Assembly authorized the use of road impact fees in 1989 (§ 15.2-2317 et seq.) This authorization applies only to Northern Virginia localities, including the recently added Stafford County. Generally, authorized localities have not used these provisions, but have relied on existing conditional zoning authority. Numerous other localities have unsuccessfully sought impact fee authorization for roads, schools and other public uses in recent years.